IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 22ND FEBRUARY 2007 / 3RD PHALGUNA 1928

Crl.Rev.Pet.No. 688 of 1999()

CRA.340/1996 of SESSIONS COURT, THRISSUR
CC.502/1994 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, THRISSUR

.....

REVN. PETITIONER:

RAFOOHATH, S/O. SRAMBIYEKKAL
BAVAKUNJU, GANESAMANGALAM
DESOM, VADANAPPALLY VILLAGE,
THRISSUR DISTRICT.

BY ADV. SRI.C.VATHSALAN

RESPONDENTS:

THE CIRCLE INSPECTOR OF POLICE,
GURUVAYOOR, REPRESENTED BY
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM

BY ADV. SRI. AMJAD ALI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P. NO. 3061/1999 IN CRL. R.P. NO. 688/1999

DISMISSED

22.02.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A. to Judge.

K.R. UDAYABHANU, J

==========

CRL. R.P. NO. 688 OF 1999

==========

Dated this the 22nd day of February 2007

O R D E R

The petitioner/accused stands convicted for the offences under sections 279, 337, 304(A) of the Indian Penal Code and sentenced, as modified by the appellate court, to undergo imprisonment for three months each for offences under sections 279 & 337 and to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for a further period of two months for the offences under section 304 A and also the accused was disqualified for driving any type of vehicle for two years vide section 20(1) of the Motor vehicles Act. The prosecution case is that on 03.07.2004 at about 5 pm the accused drove the autorickshaw bearing Registration No.KL-8A/5808 along the Kanjany-Vadanappilly public road towards western direction in a rash and negligent manner; and while overtaking a bus, the autorickshaw was hit by the tempo that came from the opposite direction resulting in

injuries to the passengers of the autorickshaw and the death of the child aged 5 months. It is contended that the first version of the PWs 1 and 2 before the Doctor is that the tempo hit on the auto rickshaw as mentioned in Exts. P6 and P7, wound certificates and that in all probability as the impact of the hit the child would not thrown out. It is also the case of the revision petitioner that there is no evidence as to the identity of the accused.

2. The evidence consisted of the testimony of PWs 1 to 11 and Exts. P1 to P9. Considering the direct evidence of PWs 1 and 2, the passengers in the autorickshaw, I find that PW2 has specifically stated that it was the accused who drove the vehicle. Of course, it is mentioned by her in the cross examination that she has not stated before the police that the accused could be identified by sight. I find that the above statement in the cross examination is insufficient considering the fact that the so called omission was not proved while questioning the investigating officer. As to the contention as to the version of the Doctor in

Exts. P6 and P7, wound certificates, I find that the same would not help the accused as the alleged cause mentioned in the wound certificates would only indicate the manner of expression in which the same is recorded. The evidence of PWs 1 and 2 as to the incident is not contradicted by the previous statements. Further more, it can be seen from the scene mahazar that the incident took place on the wrong side of the road. It was also proved from the evidence of Motor Vehicles Inspector that the vehicle had no mechanical defects. In the circumstances, I find no scope for interference in the concurrent findings of the court below that the accused is guilty of the offences alleged.

3. So far as the sentence is concerned, the counsel for the revision petitioner has pleaded for leniency pointing out the fact that more than a decade has elapsed since the date of occurrence and the accused was then aged 23 and right now he is having a family consisting of wife and children. Of course, he was facing prosecution and the impending imprisonment since long. In the circumstances, the sentence imposed for the offence under

section 279 is modified to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month and the punishment under section 337 is modified to a fine of Rs.500 and in default to undergo simple imprisonment for 15 days. He stands convicted for the offence under section 304 to undergo rigorous imprisonment for six months. The same is modified to simple imprisonment for 25 days and to pay a fine of Rs.1,000/- and in default to undergo imprisonment for a further period of six months.

The Crl. R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

RV